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SEP 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 29, 1997

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Further Notice of Proposed Rulemaking
CC Docket No. 94-129

Dear Mr. Caton:

On behalf of TPV Services, Inc. ("TPV Services"), and pursuant to Sections 1.415 and 1.419 of the Commission's rules, enclosed please find an original and eleven (11) copies and two diskettes containing the Reply Comments of TPV Services in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Michael R. Gardner
William J. Gildea III
Counsel for TPV Services

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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SEP 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Subscriber Carrier) CC Docket No. 94-129
Selection Changes Provisions of the)
Telecommunications Act of 1996)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
_____)

REPLY COMMENTS OF TPV SERVICES, INC.

TPV Services, Inc. ("TPV Services") by its attorneys, hereby files Reply Comments in response to the *Further Notice of Proposed Rulemaking* ("FNPRM") (FCC 97-248) adopted July 14, 1997 in the above-referenced proceeding.

I. Introduction

TPV Services is encouraged by the industry's overwhelming response to the subject *Further Notice of Proposed Rulemaking* ("FNPRM"), in particular the industry's condemnation of "slamming." Although respondents' opinions vary greatly regarding what steps are required to minimize slamming and its harmful impact on consumers, most commenters favor some form of increased Commission action to limit the harmful impact of slamming throughout the country. TPV Services shares that view — the Commission must act now and do so in an efficient regulatory fashion that

facilitates industry marketing efforts while adequately protecting consumers.

As noted in its Comments, TPV Services believes that the pervasive concerns of Congress, the Commission, and consumers regarding slamming can be promptly and effectively addressed by its proposals regarding third-party verification. By adopting TPV Services' proposals, which necessitate minimal regulatory cost and intrusions into the highly competitive telco marketplace, the Commission will promote maximum consumer choice and certainty in an environment that has often been chaotic and confusing for consumers victimized by "slamming."

II. Third Party Verification ("TPV") Should be the Industry Standard

TPV Services agrees with MCI that third-party verification is the appropriate industry standard for verifying PC changes. As MCI states, TPV is "demonstrably the most *consumer-friendly* and *effective* method" of reducing unlawful PC changes.¹ MCI's support of TPV is particularly persuasive due to the "dramatic" results MCI has seen since it adopted a policy of requiring TPV with all residential and small business PC changes.² Moreover, TPV Services agrees with MCI that widespread reliance on TPV would increase public confidence in carrier integrity and that the benefits of TPV far outweigh the costs.³

¹ *See Comments of MCI*, September 15, 1997, p. 4 (emphasis added).

² *See id.*

³ *See id.*, p. 5.

Accordingly, as TPV Services detailed in its Comments, due to the inherent conflicts of interest of both telecommunications carriers and their commission-based telemarketing agents, independent third-party verification remains the only *consumer-neutral* option left to ensure proper verification of PC changes and PC freezes. Accordingly, in order to ensure that third-party verification becomes a reliable industry standard, as TPV Services outlined in its Comments, TPV Services urges the Commission to (1) adopt a clear definition of an "independent third-party verification entity;" (2) require an administratively simple self-certification process for TPVs; and (3) permit, and in some instances require, TPV entities to submit PC changes and PC freezes with all attendant liability.⁴

III. The Commission Should Adopt a Presumption of PC Change Validity and Subject Carriers to Reduced Liability When TPV is Utilized.

TPV Services concurs with MCI's Comments filed in this proceeding that in order to encourage the use of third-party verification, the Commission should establish a presumption of validity when a carrier relies on TPV to verify a PC change and subject carriers to limited damages in the event an unauthorized PC change is executed. Establishing this presumption with the attendant reduced liability would create the necessary incentive for increased carrier reliance on TPV.

⁴ In instances where the entity seeking to provide service has no financial interest in the carrier that will ultimately execute the PC change, the TPV *entity should be permitted* to submit the PC change. Where the carrier seeking to provide service has a financial interest in the executing carrier, the Commission should *require* a TPV entity to submit the PC change. See *TPV Services' Comments*, September 15, 1997, p.11.

Importantly, in order for this presumption and attendant reduced liability to make regulatory and legal sense, the Commission must ensure that TPV entities are *truly independent* from the carriers for whom they are verifying the PC changes. Accordingly, as TPV Services outlined in its Comments, the Commission should adopt a clear definition of an *Independent Third-Party Verification Entity*.⁵

Moreover, to further expand the role of TPV in preventing unlawful PC changes, TPV Services urges the Commission to allow, and in some instances require, TPV entities to *submit* PC changes as well.⁶ However, as TPV Services detailed in its Comments, when the TPV entity *submits* the PC change, the Commission should hold the TPV entity fully liable for the value of all required reimbursement and/or forfeitures that would have been imposed on the unauthorized carrier had it submitted the unauthorized PC change. In turn, the unauthorized carrier must be absolved from all

⁵ See *Comments of TPV Services*, pp. 6-7.

TPV Services proposed the following definition:

An "Independent Third-Party Verification Entity" is an entity that:

- (A) *Is independent from the entity that seeks to provide or market the new service;*
- (B) *Is not directly or indirectly managed, controlled, directed, or owned wholly or in part, by an entity that seeks to provide or market the new service or by any corporation, firm or person who directly or indirectly manages, controls, directs or owns more than five percent of the entity seeking to provide or market the new service;*
- (C) *Operates from facilities physically separate from those of the entity that seeks to provide or market the new service;*
- (D) *Does not derive commissions or compensation based on the number of sales confirmed.*

⁶ *Id.*, p. 8.

liability.⁷ However, should the Commission decide not to adopt TPV Services' proposal to relieve the underlying carrier of liability in the event the TPV entity submits the unauthorized PC change, it should in the alternative adopt MCI's presumption of validity, and attendant reduced liability when a carrier relies on a TPV entity to *submit* a PC change.

By establishing this presumption and attendant reduction in liability, and in the case of TPV PC change submissions relieving carriers from liability completely, the Commission would provide the necessary regulatory framework to encourage widespread use of third-party verification thereby allowing TPV to become a reliable industry standard to prevent slamming.

IV. Computer-Assisted TPV is a Cost Effective Tool to Prevent Slamming

In balancing the competing goals of encouraging competition and enhancing consumer protection, the Commission must take into account the overall costs to the industry and consumers of the policies it ultimately adopts. Thus, ensuring adequate customer protection while maintaining maximum marketplace flexibility for competing telecommunications providers should be the ultimate goal of the Commission in this proceeding.

Contrary to the objective of maximum industry flexibility, Quick Response, a live operator TPV company, argues in its Comments that the Commission should adopt a

⁷ *Id.*, p. 11.

"moratorium on the use of automated attendant systems."⁸ TPV Services believes that reliable third-party verification can be provided by live operator or computer-assisted systems and urges the FCC not to adopt this self-serving proposal. The Commission is well aware that mandating industry standards in any industry often sacrifices technological development and should always be resisted.

Moreover, Quick Response argues that computer-assisted TPV systems remove the "human factor" and eliminate the opportunity for the TPV operator to verify certain information for the consumer through the help of "rebuttal" forms provided by the telemarketers or competing providers.⁹ TPV Services believes that this practice of TPV entities providing service-specific information to consumers through the use of rebuttal forms is precisely the type of role TPV entities should not be playing in the PC change verification process.

The TPV entity's role should be to ensure that the consumer understands the *essential terms* of the contract just agreed to with the competing carrier. For example, the TPV entity should ensure that the consumer understands which class of service, i.e., long distance, intraLATA or local exchange, is being purchased from the new carrier. Moreover, to further bolster the verification process, the Commission may decide to require, as some states do, that the TPV system verify the particular rates offered by the carrier. However, allowing the TPV to do more than ensure the

⁸ *Comments of Quick Response*, August 13, 1997, p. 6.

⁹ *Comments of Quick Response*, p. 5.

consumer understands the *essential terms* of the agreement would encourage sloppy telemarketing practices by rendering the TPV process a "safety net" for the telemarketer rather than the consumer, and would improperly blur the line between verification and marketing.

TPV Services believes that *both* live operator and computer-assisted TPV can be effective tools in dramatically reducing incidents of slamming. There are many advantages to computer-assisted TPV, not the least of which is the all-important cost factor.¹⁰ Accordingly, TPV Services urges the Commission to adopt rules as outlined in TPV Services' Comments that make maximum use of third-party verification, without unduly hindering the development of this optimal, consumer-neutral tool to reduce slamming.

V. Conclusion

In view of the overwhelming expression of concern by the affected telecommunications companies, state governments and consumer groups who oppose slamming, the Commission should take note of the dramatic decrease in slamming occurrences that at least one major long distance provider has witnessed when third-party verification is utilized. Accordingly, as the Commission seeks to bolster its longstanding efforts to eliminate slamming, TPV Services urges the Commission to

¹⁰ Moreover, with TPV Services' system, accuracy is guaranteed because the recorded responses are verified multiple times by TPV Services' employees through a painstaking quality control process.

adopt effective and administratively simple rules that encourage the use of independent third-party verification. TPV Services' proposals will preserve the necessary flexibility for telecommunications carriers' to market their products and services, while ensuring that consumers enjoy maximum competitive telco choice free of slamming.

Respectfully submitted,
TPV Services, Inc.

By:



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September 29, 1997

Certificate of Service

I, Michael C. Gerdes, hereby certify that copies of the foregoing "Reply Comments of TPV Services, Inc.," were delivered by hand, on September 29, 1997 to the following:

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